

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CATHERINE K. JONES and U.S. POSTAL SERVICE,  
POST OFFICE, Winston-Salem, N.C.

*Docket No. 96-2325; Submitted on the Record;  
Issued December 28, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing continuing disability after December 9, 1995 that was causally related to her accepted employment injury of acute trauma and anxiety.

On July 26, 1995 appellant, then a 58-year-old clerk, filed a traumatic injury claim, alleging that she sustained an injury on July 13, 1995 when two men assaulted her while she was in her car on her way to work. Appellant reported that one man was hanging onto the hood of her car and pounding on the windshield while the other man was trying to open her car door. The man trying to open her car door fell off her car, however, the man hanging onto the hood of her car was still doing so as she entered the premises of the entrance of the employing establishment. On October 24, 1995 the Office accepted appellant's claim for acute trauma and anxiety. On November 12, 1995 appellant filed a claim for compensation on account of traumatic injury for the period of October 6 to December 8, 1995. This claim was approved by the Office. Appellant filed a claim for continuing compensation for the periods of December 9, 1995 to February 16, 1996 and February 17 to March 29, 1996.

On February 24, 1996 appellant filed a claim for recurrence of disability beginning October 6, 1995. In a supplemental statement, appellant indicated that she had been working from 4:00 a.m. to 12:30 p.m. prior to August 29, 1995 and thereafter her hours were changed to 11:00 p.m. to 7:30 a.m.<sup>1</sup> She alleged that the most recent change in her hours interfered with her ability to properly take the medications that had been prescribed in order for her to be functional after the assault in July 1995 and that the medicine prescribed required that she get night-time

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<sup>1</sup> Appellant also filed an occupational disease claim on December 20, 1994 which was denied on November 20, 1995. In that claim she alleged that she was disabled by stress related to factors of her federal employment, including a change of her hours from 6:00 a.m. to 3:00 p.m. to 4:00 a.m. to 12:30 p.m. in March 1994 and the abolishment of her position and title to an unassigned regular position. The Office found that there were no compensable factors of employment provided by appellant.

sleep. In a decision dated April 5, 1996, the Office denied appellant's claim for continuing compensation for the period of December 9, 1995 to February 16, 1996 on the grounds that appellant's change of hours which had a deleterious affect on her condition was a new and separate factor, separate from the assault on appellant from which she had been released for full duty on July 14, 1995 by her physician. The Office noted that appellant should file an occupational disease claim to receive compensation in relation to this work factor. In a decision dated April 9, 1996, the Office denied appellant's claim for continuing compensation for the period of February 17 to March 29, 1996. In a merit decision dated June 5, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of its prior decisions denying appellant's claim for recurrence.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup> An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>3</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>4</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>5</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>6</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>7</sup>

In the present case, appellant submitted numerous form and narrative reports from her treating physician, Dr. Nancy S. Gaby, a Board-certified psychiatrist, who related appellant's diagnosed conditions to her accepted employment injury. Contrary to the Office's finding that appellant returned to work on July 14, 1995, appellant was examined by Dr. Gaby on that date.

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<sup>2</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>4</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>5</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>6</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>7</sup> *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

Although a treating emergency room physician apparently estimated that appellant would be able to return to work on July 14, 1995, Dr. Gaby did not release appellant to return to work until July 22, 1995. In narrative reports dated August 3 and 21, 1995, Dr. Gaby noted that appellant's work hours had been changed in March 1994 with detrimental results on appellant's health and that she strongly advised that she be allowed to continue to work the hours of 4:00 a.m. to 1:00 p.m. to allow her various medications to keep her emotional condition stable. In the August 21, 1995 report, Dr. Gaby reported that she had to add additional medications to appellant's dosing regime after the July 1995 assault, advised that appellant should stay on her current work schedule and noted that any interruption in appellant's sleep schedule would be detrimental to her emotional state. When appellant's hours were changed effective September 1, 1995, appellant worked for approximately one month, but her physician requested that she be excused from work beginning October 6, 1995 as appellant was "going through stress because insomnia due to inability to take medications on scheduled time. Job related to incidents of [July 13, 1995 and March 19, 1995.]" In a form report dated October 24, 1995, Dr. Gaby reported that appellant was experiencing insomnia due to additional stress of being moved from daytime, 4:00 a.m. to 12:30 p.m., to nighttime, 11:00 p.m. to 7:30 a.m., and that she had prescribed medication for appellant's trauma, stress and anxiety related to the incident of July 13, 1995 but that the medications were not sufficiently effective due to appellant's inability to sleep during the day hours. In a note dated November 16, 1995, Dr. Gaby indicated that appellant could not return to work on "November 18, 1995 due to work-related stress, post-traumatic stress disorder, chronic sleep disorder, chronic anxiety depression, painful recurrences of the site event, all related to the incident of July 13, 1995." In a duty status form report dated February 13, 1996, Dr. Gaby indicated that appellant was totally disabled from October 6, 1995 to February 16, 1996 due to chronic post-traumatic stress and that appellant could return to work but could not work the hours of 12:00 a.m. to 5:00 a.m. because of her medication dosing due to the incident of July 13, 1995. In a medical clearance form dated February 16, 1996, Dr. Gaby reiterated that appellant suffered from chronic post-traumatic stress due to the incident of July 13, 1995 and was released for work effective February 13, 1996 with no side effects from her medications for that incident as long as she was allowed to sleep between the hours of 12:30 a.m. and 4:00 a.m. This restriction on appellant's work hours was repeated in a form report dated February 15, 1996.

Appellant has submitted evidence to establish that her physician placed limitations on her hours of work when she returned following her July 13, 1995 injury to allow for proper dosing of the medications that were taken as a result of that injury. The Board has held that a change in an employee's duty shift is a factor of employment to be considered in determining whether an injury has been sustained in the performance of duty.<sup>8</sup> The facts of this case are similar to the facts in *Charles J. Jenkins*,<sup>9</sup> wherein the employee alleged depression which he attributed, in part, to a reassignment from day-shift work to night-shift work, and the Board held that such a change in the employee's duty shift was a compensable factor of employment. The medical reports by Dr. Gaby indicate that appellant's claimed inability to work after December 9, 1995 was due to her post-traumatic stress and anxiety which increase when she was unable to take her

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<sup>8</sup> *Dodge Osborne*, 44 ECAB 849 (1993).

<sup>9</sup> 40 ECAB 362 (1988).

medications or sleep at night as a result of the change in work hours from a daytime shift to a nighttime shift. The change in appellant's work hours directly impacts on the medication that she is taking as a result of the July 1995 injury and is a compensable factor of employment under the Act.

The Board finds that this case is not in posture for decision

The medical evidence consists of reports from Dr. Gaby addressing appellant's inability to work on and after December 9, 1995. While the reports by Dr. Gaby are not sufficient to establish disability related to the July 13, 1995 employment injury after December 9, 1995, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence.

On remand, the Office should further develop the evidence by providing Dr. Gaby with a statement of accepted facts and requesting that she submit a rationalized medical opinion on whether appellant has any disability causally related to the July 13, 1995 employment injury on or after December 9, 1995. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated April 5, 9 and June 5 1996 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.  
December 28, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member